SOO BEE & CO., LTD. v. REX.

[App. Civ. Juris. (Sir Charles Murray-Aynsley, C.J.) May 28, 1952]

[Singapore — Magistrate's Appeal No. 134 of 1951]

Municipal Ordinance (Cap. 133), ss. 12(3) and (4), 144, 388 and 399 — Erecting in rural area a building the plans of which had not been approved by the Rural Board — Constitution of the Rural Board.

The appellant Company was convicted under section 144 of the Municipal Ordinance for erecting a building in the rural area the plans of which had not been approved by the Rural Board. It was contended that the plans were rejected because they did not conform to certain by-laws and as these by-laws were invalid no offence had been committed. It was also contended that the prosecution was not properly instituted, in that it was not authorised in the manner prescribed by section 388 of the Municipal Ordinance.

Held, that (1) if the Rural Board had refused to approve plans for some reason which is bad in law, the person aggrieved has a remedy by way of mandamus or otherwise. If he proceeded to build without approval he had committed an offence; (2) sub-sections (3) and (4) of section 12 of the Municipal Ordinance are applicable to the Rural Board and although there was no legislation which created the office of Deputy Chairman of the Rural Board, it was clearly the intention to invest the Deputy Chairman with powers described in section 12(4).

MAGISTRATE'S APPEAL.

T. W. Ong for the appellant.

L. Rayner for the Crown.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : — In this case the appellant Company was convicted under section 144 of the Municipal Ordinance (Cap. 133) for erecting in the rural area a building the plans of which had not been approved by the Rural Board. It was admitted that the Company had proceeded to erect a smoke house the plans of which had previously been submitted to, and rejected by the Board. In the Court below and in grounds of appeal it was contended that the plans were rejected because they did not conform to certain by-laws and as these by-laws were invalid no offence had been committed. This was clearly not the law. It may be that, if the Board refuses to approve plans for some reason which is bad in law, the person aggrieved has a remedy by way of mandamus or otherwise. If he proceeds to build without approval he commits an offence.

There were, however, two subsidiary points. First it was contended that there was no evidence that the building was in the rural area. As the manager of the appellant Company gave evidence to the effect that he had submitted plans to the Board there cannot be anything in this contention.

There was a further point that the prosecution was not properly instituted, in that it was not authorized in the manner prescribed by section 388. Here the prosecution was launched by a complaint made by a gentleman described as a Building Surveyor, an officer of the Board. It was signed by this gentleman and also by a gentleman who has been appointed Deputy Chairman of the Board and recited the fact that the prosecution had been directed by the Chairman. The direction of the Chairman was not produced at the hearing.

I am not at all satisfied that any sanction is required in these cases. The general rule is that any person can prosecute in non-seizable cases. I shall assume, for purposes of argument, that authority under section 388 is necessary.

If that is the case, a difficulty arises in this way. The Board is constituted under section 399 of the Municipal Ordinance which gives the Governor power to constitute a Rural Board and to apply and adapt the provisions of the Ordinance for the purpose. This was done and various offices were created but not, apparently, an office of Deputy Chairman. Sub-sections (3) and (4) of section 12 of the Municipal Ordinance were, however, applied to the Board. This empowers the Governor in Council to appoint a Deputy President and defines his powers: "(4) The Deputy President shall, subject to the directions of the President, have all the powers of the President....."

On September 8, 1950, (Gazette Notification No. 2023) acting under powers conferred by section 12 of the Ordinance, the Governor appointed Mr. Burlock by name to be Deputy Chairman of the Rural Board. Although there was no legislation which created the office of Deputy Chairman, it was clearly the intention to invest Mr. Burlock with the powers described in section 12(4). I think, therefore, that Mr. Burlock, whose signature appears on the complaint, had authority to direct the prosecution under section 388.

The appeal is, therefore, dismissed.

Appeal dismissed.

NG ENG KANG v. R. SITHARAM & ANOR.

[Court of Appeal (Sir Charles Murray-Aynsley, C.J. (Singapore), Mathew, C.J. (F.M.) and Storr, J.) May 25, 1952]

[Singapore — Civil Appeal No. 4 of 1952]

Landlord and tenant — Protection of sub-tenant — Control of Rent Ordinance, 1947 — Inferior Court exceeding its jurisdiction — Writ of Prerogative.

If there is no prohibition at the time of sub-letting the sub-tenant is entitled to protection by section 15 of the Control of Rent Ordinance, 1947. The trial Court